

BC 12/27/11 11:38:37  
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W DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

Prepared by, Recording requested by and

~~When recorded return to:~~

WELLS FARGO BANK, NATIONAL ASSOCIATION

1808 Aston Avenue, Suite 250

Carlsbad, California 92008

Phone: (760) 918-2700

Attention: Loan Admin.

Loan No.: 0264736835

Unit No.: 269

Return To: First American Title Insurance Company

2001 Airport Road, Suite 301

Flowood, MS 39232

Attn: Melissa Holyfield

(601) 366-1222

INDEXING INSTRUCTIONS: Lot 5, Southlake Commercial Subdivision located in Sec. 36, Township 1 South, Range 8 W, DeSoto County, MS, PB 55, Page 44

Marginal Notation: Book 147, Page 488

#### ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment"), is made as of December 10<sup>th</sup>, 2011 (the "Effective Date"), by FCHUX LLC, a Delaware limited liability company ("Assignor"), having its principal place of business at 1345 Avenue of the Americas, 46<sup>th</sup> Floor, New York, New York 10105, c/o Drawbridge Special Opportunities Fund LP, Attn: Constantine M. Dakolias, Phone: (972) 532-4341 to and for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Assignee"), with offices at 1808 Aston Avenue, Suite 250, Carlsbad, California 92008, Phone: (760) 918-2700.

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER AND DELIVER to Assignee the entire lessor's interest in and to all current and future leases (including without limitation usufructs and estates in land) and other agreements affecting the use, enjoyment, or occupancy of all or any part of the Property (as defined in the Mortgage, which is defined below), which Property includes that certain property located in DeSoto

Assignment of Leases and Rents (Mississippi)  
Wells Fargo/Fortress - O'Charley's  
Loan No.: 0264736835 / Unit No.: 269

County, City of Southaven, in the State of Mississippi, more particularly described in Exhibit A annexed hereto and made a part hereof.

TOGETHER WITH all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof, including, without limitation, that certain Master Lease Agreement dated October 17, 2011 (the "Master Lease"), by and between Store Capital Acquisitions, LLC, a Delaware limited liability company, as landlord, as assigned by Store Capital Acquisitions, LLC to Assignor, as landlord, and O'Charley's, Inc., a Tennessee corporation ("Master Tenant"), as tenant (all of the leases and other agreements described above, including the Master Lease, together with all other present and future leases and present and future agreements and any extension or renewal of the same are hereinafter collectively referred to as the "Leases"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder;

TOGETHER WITH all rents, income, issues, revenues and profits arising from the Leases and renewals thereof and together with all rents, income, issues and profits from the use, enjoyment and occupancy of the Property (including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents, security deposits and liquidated damages following default under any Leases, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Assignor's rights to recover monetary amounts from any Tenant (as hereinafter defined) in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejection of a Lease, together with any sums of money that may now or at any time hereafter be or become due and payable to Assignor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas and mining Leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Assignor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property) (all of the rights described above hereinafter collectively referred to as the "Payments").

THIS ASSIGNMENT is made for the purposes of securing:

- A. The total principal sum of TWENTY FIVE MILLION ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$25,100,000.00) (the "Loan"), made pursuant to the terms and conditions of that certain Loan Agreement of even date herewith (the "Loan Agreement"), by and between Assignee and Assignor, and which is evidenced by that certain Secured Promissory Note (Variable Rate) of even date herewith, in the principal sum of the Loan (the "Note"), such Note also secured by, and/or executed in connection

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with, the other Loan Documents (as defined in the Loan Agreement), including, without limitation, those certain mortgages, deeds of trust and/or deeds to secure debt (collectively, the "**Mortgage**") covering, among other things, the Property. The Maturity Date of the Loan is December 16<sup>th</sup>, 2014, subject to extension pursuant to the terms and conditions of the Loan Agreement. Any capitalized term used herein but not defined herein has the meaning set forth in the Loan Agreement.

- B. The performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein and in the other Loan Documents.
- C. The discharge of the Secured Obligations (as defined in the Mortgage).

Assignor represents and warrants, as of the Effective Date, that: (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Lease on the part of any party; (b) no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance; and (c) none of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned.

Assignor further covenants with Assignee that Assignor shall, at Assignor's sole cost and expense: (a) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases; (b) use reasonable efforts to keep the Property leased at all times to tenants which Assignor in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires); (c) promptly upon Assignee's request, deliver to Assignee a copy of each requested Lease and all amendments thereto and waivers thereof; and (d) promptly upon Assignee's request, execute and record any additional assignments of landlord's interest under any Lease to Assignee and specific subordinations of any Lease to the Mortgage, in form and substance satisfactory to Assignee (and, with respect to any Lease, subject to the terms and conditions set forth in said Lease). Assignor shall not, unless consented to in writing by Assignee (in its sole and absolute discretion) or otherwise permitted under any other provision of the Loan Documents (it being understood that Assignor's execution and delivery of this Assignment, together with Assignee's disbursement of the proceeds of the Loan, shall constitute Assignee's written consent to the terms of the Master Lease in existence as of the date of this Assignment): (x) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances; (y) grant any tenant under any Lease any right to prepay rent more than one (1) month in advance; (z) except upon Assignee's request, execute any assignment of landlord's interest in any Lease; or (aa) collect rent or other sums due under any Lease in advance, other than to collect rent one (1) month in advance of the time when it becomes due. Any such attempted action in violation of the provisions of this Assignment shall be null and void.

Assignor shall, at Assignor's sole cost and expense, give Assignee prompt written notice of any Lease Default. Unless consented to in writing by Assignee (in its sole and absolute discretion) or otherwise expressly permitted under the terms of an Approved Major Lease, Assignor shall not: (a) enter into any Major Lease which (i) is not on commercially reasonable terms and conditions similar to those found in similarly situated commercial or retail properties, as applicable; (ii) does not contain subordination, attornment and other similar mortgagee protective provisions, including a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance reasonably satisfactory to the landlord promptly upon the landlord's request, and at minimum the provisions as set forth in the Master Lease; or (iii) does not contain environmental compliance and reporting provisions reasonably satisfactory to Assignee and its counsel, and at minimum the provisions as set forth in the Master Lease; or (iv) allows the tenant to assign or sublet the premises, except in accordance with the same terms as those set forth in the Master Lease; (b) reduce any rent or other sums due under any Major Lease; (c) terminate or materially modify or amend any Major Lease or any guaranty executed in connection with such Major Lease or in any manner release or discharge the tenant under any Major Lease or the guarantor under any guaranty of the Major Lease from any material obligation thereunder; or (d) consent to any assignment or subletting by any tenant under a Major Lease, except in accordance with and subject to the terms as set forth in an Approved Major Lease; or (e) subordinate or agree to subordinate any Major Lease to any other deed of trust, deed to secure debt or mortgage (other than the Mortgage). Any such attempted action in violation of the provisions of this Assignment shall be null and void. Without limiting the generality of the foregoing, any Major Lease (as defined in the Loan Agreement) shall be an absolute triple-net lease with a minimum non-contingent lease term that expires no earlier than the expiration date of the initial term under the Master Lease. "**Major Lease**", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Aggregate Properties (as defined below), as reasonably determined by Assignee; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases relating to the Aggregate Properties, as reasonably determined by Assignee. Assignor's obligations with respect to Major Leases shall be governed by the provisions of this paragraph as well as the provisions set forth above with respect to all other Leases.

An "**Approved Major Lease**" is the Master Lease or another Major Lease approved in accordance with the provisions of the prior two paragraphs; and the term "**Aggregate Properties**" as such term is used herein refers collectively to the Property and all other properties in which mortgages or deeds of trust have been granted to secure the Secured Obligations.

It is understood that Assignor's execution and delivery of this Assignment, together with Assignee's disbursement of the proceeds of the Loan, shall constitute Assignee's written consent to the terms of the Master Lease in existence as of the date of this Assignment, approval of the tenants thereunder and a recognition that the Master Lease complies with the provisions of the

previous three paragraphs. As of the date of the Mortgage, the Property is subject to the Master Lease which constitutes a Major Lease and is the only Major Lease affecting the Property.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. **PRESENT ASSIGNMENT.** Assignor irrevocably assigns to Assignee all of Assignor's right, title and interest in, to and under all current and future Leases and Payments, it being intended by Assignor that this assignment constitute a present and absolute assignment, and not an assignment for security purposes only, and Assignee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property. Assignee confers upon Assignor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default. Upon a Default, the License shall be automatically revoked and Assignee may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Assignor shall be held by Assignor as trustee under a constructive trust for the benefit of Assignee. Assignor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Assignee for the payment to Assignee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Assignor hereby relieves the tenants from any liability to Assignor by reason of relying upon and complying with any such notice or demand by Assignee. Assignee may apply, in its sole discretion, any Payments so collected by Assignee against any Secured Obligation or any other obligation of Assignor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Assignee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, the License shall be deemed to be re-conferred upon Assignor by Assignee, without any further act or deed, until the occurrence of another Default.
2. **REMEDIES OF ASSIGNEE.** Upon or at any time after a Default, Assignee may, at its option, without waiving such Default, without notice and without regard to the adequacy of the security for the Loan, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Payments, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and may apply the Payments to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law,

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custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Loan, (including all costs and reasonable attorneys' fees). In addition to the rights which Assignee may have herein, upon the occurrence of a Default Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Payments, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Assignor or may require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. For purposes of **Paragraphs 1 and 2**, upon and during the continuance of any Default, Assignor shall be deemed to have granted to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Property after a Default. The exercise by Assignee of the option granted it in this paragraph and the collection of the Payments and the application thereof as herein provided shall not be considered a waiver of any Default under any of the Loan Documents.

3. **NO LIABILITY OF ASSIGNEE.** The foregoing irrevocable assignment shall not cause Assignee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Assignee any duty to produce rents or profits. Assignee shall not directly or indirectly be liable to Assignor or any other person as a consequence of: (a) the exercise or failure to exercise any of the rights, remedies or powers granted to Assignee hereunder; or (b) the failure or refusal of Assignee to perform or discharge any obligation, duty or liability of Assignor arising under the Leases.
4. **NOTICE TO TENANTS.** Assignor hereby authorizes and directs Master Tenant and all other tenants named in the Leases or any other or future tenants or occupants of the Property (each, a "**Tenant**" and, collectively, the "**Tenants**") upon receipt from Assignee

of written notice to the effect that Assignee is then the holder of the Note and that a Default exists thereunder or under the other Loan Documents to pay over to Assignee all Payments and to continue so to do until otherwise notified by Assignee, without further notice or consent of Assignor and regardless of whether Assignee has taken possession of the Property, and Tenants may rely upon any written statement delivered by Assignee to Tenants without any obligation or right to inquire as to whether such default actually exists and notwithstanding any notice from or claim of Assignor to the contrary. Assignor further agrees that it shall have no right to claim against any of Tenants for any such Payments so paid by Tenants to Assignee and that Assignee shall be entitled to collect, receive and retain all Payments upon and during the continuance of a Default, regardless of when and to whom such Payments are and have been paid and regardless of the form or location of such Payments. Any such payment to Assignee shall constitute payment to Assignor under the Leases, and upon and during the continuance of a Default, Assignor shall be deemed to have appointed Assignee as Assignor's lawful attorney-in-fact for giving, and Assignee is hereby empowered to give, acquittances to any Tenant for such payment to Assignee after a Default. Any Payments held or received by Assignor after a written request from Assignee to Tenants for the payment of Payments shall be held or received by Assignor as trustee for the benefit of Assignee only.

5. **RENTAL OFFSETS.** Except for the rights of Tenant to any rent reductions as the result of casualty or condemnation as set forth in the Lease, or any other action or activity specifically contemplated under the Master Lease or any other Approved Major Lease that could lead to a reduction in rent thereunder, if Assignor becomes aware that any Tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Assignor shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Assignee thereof and of the amount of said set-offs, and (iii) within ten (10) days after such accrual for a valid set-off, reimburse Tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall effectively assure that Payments thereafter due shall continue to be payable without set-off or deduction.
6. **SECURITY DEPOSITS.** All security deposits of Tenants, whether held in cash or any other form, shall be treated by Assignor as trust funds, shall not be commingled with any other funds of Assignor and, if cash, shall be deposited by Assignor in one or more segregated accounts at such commercial or savings bank or banks as is reasonably satisfactory to Assignee. Any bond or other instrument which Assignor is permitted to hold in lieu of cash security deposits under applicable legal requirements (i) shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, (ii) shall be issued by an entity reasonably satisfactory to Assignee, (iii) shall, if permitted pursuant to legal requirements, name Assignee as payee or beneficiary thereunder (or at Assignee's option, subject to applicable Assignor requirements, be fully

assignable to Assignee), and (iv) shall, in all respects, comply with applicable legal requirements and otherwise be reasonably satisfactory to Assignee. Assignor shall, upon request, provide Assignee with evidence reasonably satisfactory to Assignee of Assignor's compliance with the foregoing. Following the occurrence and during the continuance of any Default, Assignor shall, upon Assignee's request, if permitted by applicable legal requirements, turn over to Assignee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Assignee subject to the terms of the Leases.

7. **OTHER SECURITY.** Assignee may take or release other security for the payment of the Loan, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Loan without prejudice to any of its rights under this Assignment.
8. **OTHER REMEDIES.** Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Loan and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.
9. **NO MORTGAGEE IN POSSESSION.** Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor (except to the extent such liability is caused by Assignee's gross negligence or willful misconduct).
10. **NO ORAL CHANGE.** This Assignment may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.
11. **CERTAIN DEFINITIONS.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeable in singular or plural form and the word "**Assignor**" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Assignee**" shall mean "Assignee and any subsequent holder of the Note," the word "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and



any other entity, the word "**Property**" shall include any portion of the Property and any interest therein; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

12. **NON-WAIVER.** The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (a) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the other Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment or the other Loan Documents. Assignee may resort for the payment of the Loan to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Loan, or any portion thereof or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.
13. **INAPPLICABLE PROVISIONS.** If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.
14. **COUNTERPARTS.** This Assignment may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.
15. **GOVERNING LAW.**
  - 15.1 THIS ASSIGNMENT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT (A) AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND (B) THAT THE CREATION, PRIORITY, VALIDITY AND PERFECTION OF THE LIEN GRANTED HEREBY, AND THE REMEDIES GRANTED HEREIN (INCLUDING, WITHOUT LIMITATION, THE ASSIGNEE'S RIGHTS TO ATTACHMENT OF RENTALS FOLLOWING AN EVENT OF DEFAULT), SHALL BE GOVERNED BY THE APPLICABLE LAWS OF THE JURISDICTION IN WHICH THE LAND (AS DEFINED IN THE MORTGAGE) IS LOCATED.

- 15.2 ASSIGNOR AND ASSIGNEE HERETO CONSENT, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTE, WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE LAND IS LOCATED, TO TAKE JURISDICTION OF THE PROPERTY. ASSIGNOR FURTHER CONSENTS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE LAND IS LOCATED, IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO THE PROPERTY INCLUDING BUT NOT LIMITED TO FORECLOSURES. ASSIGNOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH HEREIN IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ASSIGNOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ASSIGNEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST ASSIGNOR IN ANY JURISDICTION.
16. **SUCCESSORS AND ASSIGNS.** Assignor may not assign its rights under this Assignment. Assignor hereby acknowledges and agrees that Assignee may assign this Assignment without Assignor's consent. Subject to the foregoing, this Assignment shall be binding upon Assignor, its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.
17. **TERMINATION OF ASSIGNMENT.** When (a) all amounts due under the Loan Documents are paid in full, and (b) all other obligations of Assignor under the Loan Documents are fully satisfied, Assignee shall be deemed to have automatically, without further act or deed, reconveyed the Payments and Leases to Assignor; provided, however, that upon written request of Assignor, Assignee shall promptly provide such written

documents or other evidence as Assignor may reasonably request to further evidence such reconveyance.

18. **CONFLICT**. If any conflict or inconsistency exists between the absolute assignment of the Payments and Leases in this Assignment and the Absolute Assignment of Rents and Leases contained in Article 3 of the Mortgage, the terms of the Mortgage shall control.

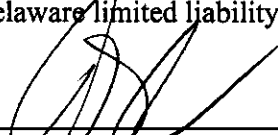
THIS ASSIGNMENT shall inure to the benefit of Assignee and any subsequent holder of the Note and shall be binding upon Assignor, and Assignor's heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

IN WITNESS THEREOF, Assignor has duly executed as of the date acknowledged below, to be effective as of the date first above written.

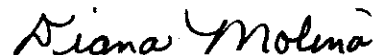
**ASSIGNOR:**

**FCHUX LLC,**  
a Delaware limited liability company

By:   
Name: Joshua A. Pack  
Title: Vice President

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

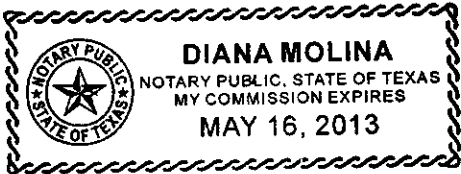
Personally appeared before me, the undersigned authority in and for the said County and State, on this 9th day of December, 2011, within my jurisdiction, the within named Joshua A. Pack, who acknowledged that he is Vice President of FCHUX LLC, a Delaware limited liability company, and that for and on behalf of said company and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized so to do.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

5.16.2013

[Affix Notarial Seal]



**Exhibit A**  
**Legal Description**

Store No. 269 - Southaven

Address: 357 Goodman Rd. West, Southaven, DeSoto County, MS 38671

Real property in the City of Southaven, County of DeSoto, State of Mississippi, described as follows:

Lot 5, South Lake Commercial Subdivision located in Section 36, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof of record in Plat Book 55, Page 44, in the Chancery Court Clerk's office of DeSoto County, Mississippi.